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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

*In re Oracle Corporation Securities
Litigation*

CLASS ACTION

Case No. 18-cv-04844-BLF

**THE PARTIES' JOINT SUBMISSION
RE: CASE SCHEDULE**

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Case No. 18-cv-04844-BLF

Lead Plaintiff Union Asset Management Holding AG (“Lead Plaintiff”) together with Defendants Oracle Corporation, Safra A. Catz, Paula R. Hurd, as Trustee of the Hurd Family Trust, Lawrence J. Ellison, and Ken Bond (collectively, “Defendants”) make the following joint submission regarding the case schedule. At the conclusion of this submission, each Party has described its position on the one item remaining in dispute.

THE PARTIES’ JOINT STATEMENT

The Parties filed their Joint Case Management Statement (ECF No. 90) and agreed to meet and confer and propose a schedule to govern this Action after the Court set a trial date.

On April 29, 2021, the Court held the Case Management Conference (ECF No. 92).

On April 30, 2021, the Court entered the Case Management Order (ECF No. 94), setting certain deadlines and dates, including the last day to request leave to amend the pleadings; last day to file the motion for class certification; last day to hear dispositive motions; final pretrial conference; and trial.

In the Case Management Order, the Court requested that the Parties meet, confer, and submit by May 21, 2021, a stipulation and order setting all deadlines not already set by the Court.

The Parties have met and conferred on the stipulated schedule.

With one exception identified below, the Parties have agreed on a stipulated schedule, subject to the approval of the Court:

Event	Date or Deadline
Parties to Exchange Initial Disclosures Pursuant to Rule 26(a)	May 21, 2021
Last Day to Request Leave to Amend the Pleadings per F. R. Civ. P. 15	June 29, 2021
Substantial Completion of Document Production	Plaintiff’s proposal: December 23, 2021 Defendants’ proposal: April 28, 2022
Initial Mediation	By February 16, 2022

Event	Date or Deadline
Plaintiff to Move for Class Certification	October 8, 2021
Defendants to File Any Opposition to Class Certification	December 9, 2021
Deadline to File Reply in Further Support of Class Certification	February 9, 2022
Tentative Hearing Date for Class Certification	March 3, 2022
Deadline to Complete Fact Discovery	September 15, 2022 *Including deadline to bring any motions to compel or other discovery-related motions
Identification of Experts by Party Bearing Burden of Proof	September 23, 2022
Deadline to Serve Opening Expert Reports for Issues on Which the Party Bears the Burden of Proof	October 18, 2022
Identification of Rebuttal Experts	October 24, 2022
Deadline to Serve Rebuttal Expert Reports	November 22, 2022
Deadline to Serve Reply Expert Reports	December 22, 2022
Expert Discovery	January 3, 2023 – January 31, 2023 *Expert depositions to occur within this period
Deadline to File Dispositive Motions	March 6, 2023
Deadline to File Oppositions to Dispositive Motions	April 20, 2023
Deadline to File Replies for Dispositive Motions	May 25, 2023

Event	Date or Deadline
Last Day to Hear Dispositive Motions	June 15, 2023 (9:00 AM)
Final Pretrial Conference	October 5, 2023 (1:30 pm)
Trial	November 6, 2023 (9:00 am)

DISPUTED ISSUE

As noted above, the Parties reached agreement on all dates in the proposed schedule with one exception: the date for the substantial completion of document production. Lead Plaintiff proposes a deadline of December 23, 2021. Defendants propose a deadline of April 28, 2022. The Parties' respective positions are briefly set forth below.

Lead Plaintiff's Position: Lead Plaintiff believes that its proposed deadline for the substantial completion of document production in response to initial requests is appropriate for several reasons. First, Lead Plaintiff served its initial requests for production on Defendants on April 27, 2021, and Defendants will have eight months to substantially complete their document production responsive those initial requests. This provides more than adequate time when compared to other securities class action discovery schedules, including those entered by this Court. *See, e.g., In re Extreme Networks, Inc. Sec. Litig.*, 15-cv-4883-BLF (ECF No. 143) (completion of substantial document production scheduled six months after initial discovery requests served); *In re Sandisk LLC Sec. Litig.*, 15-cv-1455 (ECF No. 194) (completion of substantial document production scheduled three months after initial discovery requests served); *Hatamian v. Advanced Micro Devices, Inc.*, 14-cv-226 (ECF No. 129) (completion of substantial document production scheduled four months after initial discovery requests served).

Second, Defendants' proposal would give Defendants a year to substantially complete their document production in response to initial requests, while giving Lead Plaintiff less than five months to: (i) analyze the documents; (ii) issue and receive necessary third-party discovery based on those documents; and (iii) take all of the fact depositions. This is a lopsided allocation of the fact discovery period that is heavily and unnecessarily tilted in Defendants' favor. By

1 contrast, Lead Plaintiff's proposal provides both sides approximately eight months to
2 substantially complete document production and then nine months to complete the additional
3 critical steps noted above. This is a more equitable and appropriate allocation of the fact
4 discovery period, and it accords with other securities class action discovery schedules, including
5 those entered by this Court. *See, e.g., Extreme Networks*, 15-cv-4883-BLF (ECF No. 143)
6 (thirteen months between the completion of substantial document production for initial discovery
7 requests and the close of fact discovery); *Hatamian*, 14-cv-226 (ECF No. 129) (eight months
8 between the completion of substantial document production for initial discovery requests and the
9 close of fact discovery).

10 Defendants incorrectly characterize the schedule in *Extreme Networks*, 15-cv-4883-BLF,
11 and similar cited cases, to support their proposed schedule. In *Extreme Networks*, the Court set a
12 six-month deadline for the substantial completion of document production in response to initial
13 discovery requests and set a separate deadline for producing in response to follow up discovery
14 requests. Defendants conflate these two schedules, treating them as a single schedule covering
15 initial requests. Here, Lead Plaintiff intends for the substantial document production deadline to
16 apply only to the initial document requests, which were served on April 27. Lead Plaintiff does
17 not anticipate serving any additional discovery requests, but if it becomes necessary, Lead
18 Plaintiff will confer with Defendants and mutually agree to a later substantial completion date for
19 those requests. Given that Lead Plaintiff does not intend to serve follow up requests, it did not
20 include a schedule for such requests in this submission.

21 Third, per the Court's Case Management Order, the Parties intend to hold an initial
22 mediation session by February 16, 2022. Providing for the substantial completion of document
23 production before the mediation will give the mediation the best chance of success because it
24 will allow the Parties to intelligently evaluate the claims based on the documentary record.

25 Fourth, the deadline that Lead Plaintiff proposes is not for the full completion of
26 document production; it is only for substantial completion of documents in response to initial
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1 requests. Defendants will have additional time to fully complete their production later in the
2 discovery period, if needed.

3 Finally, Defendants’ reasons for why they should be allowed an entire year to
4 substantially produce their documents fail. Defendants’ assertion that Plaintiff’s schedule is
5 “front-loaded” is incorrect: the proposed schedule provides Defendants eight months to
6 substantially produce documents responsive to the first set of document requests—ample time by
7 any measure. And, contrary to what Defendants assert, the law does not permit them to
8 effectively stay document discovery until the court hears and/or rules on class certification. The
9 law is plain that document discovery commences immediately upon a denial of a motion to
10 dismiss in securities class actions. By asking to delay the substantial completion of document
11 production until nearly two months after Lead Plaintiff has argued class certification, Defendants
12 are effectively asking the Court to bifurcate merits and class discovery—a request that is
13 “disfavored” and regularly denied in securities class actions, where courts routinely grant class
14 certification. *See Todd v. STAAR Surgical Co.*, 2017 WL 821662, at *3 (C.D. Cal. Jan. 5, 2017)
15 (“As the Ninth Circuit has so aptly stated, securities fraud cases fit Rule 23 ‘like a glove.’”); *see*
16 *also White v. E-Loan, Inc.*, 2006 WL 2850041, at *2 (N.D. Cal. Oct. 5, 2006) (discovery
17 bifurcation motions are “disfavored”); *Ahmed v. HSBC Bank USA, Nat’l Ass’n*, 2018 WL
18 501413, at *3 (C.D. Cal. Jan. 5, 2018) (rejecting bifurcation, collecting cases, and noting that
19 “many courts are reluctant to bifurcate class-related discovery from discovery on the merits”);
20 *Garza v. Brinderson Constructors, Inc.*, 2017 WL2861128, at *1 (N.D. Cal. July 5, 2017); *Smith*
21 *v. Levine Leichtman Capital Partners, Inc.*, 2011 WL 13153189, at *1 (N.D. Cal. Feb. 11, 2011).

22 Defendants’ remaining miscellaneous arguments fail. Their self-serving characterization
23 of Lead Plaintiff’s document requests as “overly broad” is irrelevant. Disputes about document
24 requests—routine in litigation—will be expeditiously resolved through Defendants’ objections
25 and the ensuing meet-and-confer process and, if necessary, motion practice. Indeed, Defendants
26 served thirty-seven requests on Lead Plaintiff, some of which seek documents for an eleven-year
27 period, and these requests will be resolved in the same way. Any such theoretical dispute (on
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1 either side) surely does not warrant an entire year to substantially produce responsive documents.
2 Next, Defendants’ contention that their “proposal still allows Plaintiff the leisurely pace of
3 [taking] one deposition per week” is based on faulty math, ignoring that, after the receipt of the
4 document productions, Lead Plaintiff will require significant time to review and analyze them
5 before conducting any depositions. Defendants’ proposal, if accepted, would severely constrain
6 Lead Plaintiff’s ability to conduct effective depositions and third-party discovery before the fact
7 discovery deadline. Equally without merit is Defendants’ assertion that the “COVID-19
8 pandemic” requires a year for them to produce documents. While the pandemic may interfere
9 with Lead Plaintiff’s taking depositions, it poses little-to-no interference with Defendants’ ability
10 to review and produce documents—nearly all of which are in an electronic form and can be
11 reviewed remotely.

12 **Defendants’ Position:** Plaintiffs propose that Defendants substantially complete their
13 document production by December 23, 2021—nearly two years before trial (and in the midst of
14 the holiday season). Defendants’ proposal of April 28, 2022 (18 months before trial) makes
15 more sense.

16 First, document discovery in securities class actions is asymmetrical and the most
17 burdensome and expensive aspect of discovery, a factor animating the Reform Act’s passage.
18 *Cf.* H.R. CONF. REP. NO. 104-369, at 37 (reporting that discovery accounts for 80% of costs in
19 securities cases). Plaintiffs seek to front-load most of that cost before class certification, a
20 strategy long seen as coercive. *Id.*; *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547
21 U.S. 71, 81 (2006); *see* Manual for Complex Litig. § 21.14 (4th ed.) (merits discovery “may
22 ultimately be unnecessary” if class is not certified).

23 Second, Plaintiffs’ date assumes that document production can begin immediately. That
24 is unrealistic in light of the breadth of Plaintiffs’ 66 document requests. Plaintiffs’ document
25 requests served in late April are not merely an “initial” set. Given the number and breadth of the
26 requests, the vast majority—if not all—of Defendants’ document productions in this matter will
27 be in response to this first set of requests. For example, Plaintiffs demand “*all documents*
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1 concerning Cloud Product revenues and sales” for a 56-month period, even though this Court
2 held that it was allowing only a “narrow omissions” case concerning 11 statements made over 13
3 months. (ECF 84 at 35 & n.19.) Given Plaintiffs’ starting place, it may take time (and possibly
4 Court intervention) for the parties to reach agreement on a reasonable scope of discovery.

5 Third, Defendants’ proposal aligns with the case schedule that this Court approved in *In*
6 *re Extreme Networks, Inc. Sec. Litig.*, Case No. 5:15-cv-04883-BLF (ECF 143), in which
7 approximately 62% of the total fact discovery period was allocated for document and written
8 discovery. Here, Defendants’ proposal would allocate approximately 70% of the fact discovery
9 period to document production and written discovery, while Plaintiffs’ proposal would allocate
10 just 45%. Even if Plaintiffs are permitted to take 20 depositions (double the limit), Defendants’
11 proposal still allows Plaintiffs the leisurely pace of one deposition per week. Plaintiffs
12 mistakenly compare deadlines for substantial completion of production in response to *initial*
13 document requests in *Extreme Networks* and *Hatamian*. Here, the date at issue is substantial
14 completion for *all* document production. Reviewing the correct, later substantial completion
15 dates from *Extreme Networks* and *Hatamian* shows a schedule comparable to Defendants’
16 proposal. Further, the parties in *SanDisk* were unable to meet the aggressive initial schedule and
17 obtained a discovery extension five months later. (*See* 15-cv-1455 (ECF No. 228).)

18 Finally, even as there are signs that the disruption caused by the COVID-19 pandemic is
19 waning, it is still a realistic near-term challenge for which Defendants’ proposal accounts.

20 Plaintiffs’ arguments are not persuasive. Plaintiffs do not need nine months after
21 substantial completion to “analyze” documents produced or take third-party discovery. As in all
22 complex securities litigation, Plaintiffs here can, and will, analyze Defendants’ documents on a
23 rolling basis as productions occur. The same holds true for the unspecified third-party discovery
24 that likely has little, if any, merit given that this case turns on the accuracy of Oracle statements
25 and the state of mind of its speakers.

26 There also is no basis for Plaintiffs’ claim to need all documents before the mediation
27 deadline to “intelligently evaluate” the case. By that logic, mediation should be after depositions

1 and a class certification decision so that Defendants can “intelligently evaluate” the case. The
 2 whole point of early mediation is to make an intelligent decision based on extensive (but still
 3 incomplete) information before the parties incur significant unrecoverable costs. Also, the four
 4 to six weeks between Plaintiffs’ proposed deadline and an initial mediation is inconsistent with
 5 Plaintiffs’ stated need for nine months to analyze documents between substantial completion and
 6 close of fact discovery.

7 * * *

8 The Parties and their counsel thank the Court for its attention to this matter.

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 10 Dated: May 21, 2021

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ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatories.

Dated: May 21, 2021

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